



Paper No. 27

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OFFICE OF PETITIONS

In re Application of
Boehringer, et al.
Application No. 08/812,616
Filed: March 6, 1997
Attorney Docket No. 273102007800

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ON RENEWED PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b),
filed on May 31, 2002.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a proper response to the non-final Office action mailed September 1, 2000, which set a shortened statutory period for reply of three months. On March 5, 2001, petitioner (through previous counsel) filed an amendment, made timely by obtaining a three month extension of time and including a Certificate of Mailing dated March 1, 2001. A Notice of Abandonment was mailed on May 8, 2001. In response, petitioner filed a petition to withdraw the holding of abandonment on June 23, 2001, citing the timely filed amendment of March 5, 2001. However, this petition was denied in a decision mailed on August 23, 2001.¹ Accordingly, the above-identified application was abandoned as of March 2, 2001.

Petitioner filed a petition to revive under 37 CFR 1.137(b) on January 7, 2002. However, this petition was dismissed in a decision mailed on April 24, 2002. The petition was dismissed because the accompanying amendment failed to *prima facie* place the application in condition for allowance. When filing an amendment in response to a final Office action, only an amendment that *prima facie* places the application in condition for allowance serves as the proper reply under 37 CFR 1.137(b)(1). However, a more careful review of the application file confirms that the Office action mailed on September 1, 2000 was **not** a final Office action. Rather, the September 1, 2000 Office action was a non-final Office action that vacated the previous final Office action mailed on February 23, 2000.

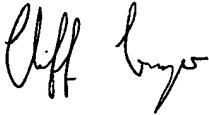
¹ The petition was denied because it was determined that the March 5, 2001 amendment did not constitute a *bona fide* attempt to advance the application to a final Office action.

With the instant petition, petitioner has met the requirements for a grantable petition under 37 CFR 1.137(b). The petition fee and the required reply (an amendment) were previously submitted with the earlier petition on January 7, 2002.

The Notice of Appeal submitted with the instant petition has **not** been entered, although a copy will remain in the application file.

The application file is being forwarded to Technology Center 1600 for consideration of the amendment filed January 7, 2002 (paper no. 22).

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0272.



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